IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2050 OF 1995

M/s. K.K. Nag Limited .. Petitioner

Vs.

Regional Provident Fund
Commissioner & Anr. .. Respondents

Mr. A.G. Damle with Mr. V.P. Shintre for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 17, 2005.

ORAL JUDGMENT:

1. Being aggrieved by the order dated 31/3/1995 passed by the Respondent No.1 under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the PF Act in short) and the Scheme framed thereunder levying damages, this petition has been filed by the Employer-Company.

2. The petitioner was covered under the PF Act with effect from 1/7/1969 and it was served with the notice dated 24/12/1993 for payment of damages under Section 14-B of the Act, for the period from March

1975 to February 1984 and some short period for the financial year 1988-89. It was pointed out that the Provident Fund contributions remittances were not made in time and, therefore, on account of that delay caused, the employer was liable to pay damages under Section 14-B of the Act. The employer submitted its reply on or about 18/2/1994 pointing out that it was facing financial difficulties and but for the co-operation extended by the employees the establishment/factory could have been closed down and the delays were thus attributed to the precarious financial condition. On conclusion of the personal hearing and on perusal of the record and written submissions made, the impugned order came to be passed and the issue of delay of 19 years in initiating the proceedings under Section 14-B was not considered. Thus an amount of Rs.5,85,673/- was sought to be recovered from the petitioner-company.

3. The respondent no.1 has filed affidavit in reply wherein it has been contended that, (a) in view of the decision of the Supreme Court in the case of Regional Provident Fund Commissioner vs. K.T.

Rolling Mills Pvt. Ltd. reported in **(1995) 1 SCC 181** the issue of delay in seeking recovery proceedings does not survive any further, (b) the provisions of Para 32-A of the Employees' Provident Fund Scheme have been brought into force with effect from 1/9/1991 and, therefore, they cannot be made applicable to the instant case and (c) the delay in each remittance was not marginal and it was 30 days to more than a year. The damages have been levied by following the guide-lines issued by the Respondent No.2 from time to time.

4. Mr. Damle, the learned counsel for the petitioner-company submitted that, (a) provisions of Para 32-A of the Scheme are applicable to every proceeding which was undertaken on or after 1/9/1991, even though the period covered by such proceeding was earlier and in support of these submissions, reliance has been placed on the decision of this Court (DB) in the case of Union of India vs. Super Processors reported in **1993 (II) Mh.L.J.203**. Para 27 of the said judgment reads as under :-

> ".....Since the latest scheme is considered more rational, there is no reason why that scheme should not be applied if the damages are required to be calculated afresh. Learned counsel who have appeared before us on behalf of the petitioners, have also accepted that if the damages are required to be determined afresh, they would be governed by the scheme and the guidelines prescribed by it which are in force at the time when such damages are determined, as the quantum of maximum penalty is not increased."
>
> (Emphasis Supplied)

5. In view of the law laid down by this court in the case of Super Processors (Supra), the damages as set out in the impugned order are required to be recalculated as per the provisions of Para 32-A of the scheme and in view of the fact that the said provisions are applicable to the instant case as well, though the period covered was from March 1975 to February 1984 and some period in the year 1988-89.

6. In the result, this petition succeeds partly. The impugned order dated 31/3/1995 passed by the Respondent No.1 is hereby quashed and set aside and it is directed that the amount of damages for the period covered by the impugned order be worked out as per the

provisions of Para 32-A of the scheme, after hearing the petitioner and as expeditiously as possible but in any case within a period of two months from today. The amount deposited with the Registry of this Court along with the interest accrued thereon shall be transferred to the Respondent No.1 forthwith and final adjustment shall be as per the order to be passed by the Respondent No.1. The final order shall be passed on or before 31st August, 2005. Rule made absolute accordingly but without any order as to cost. Writ to go forthwith to the respondents.

(B.H. Marlapalle,J.)